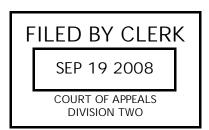
NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.



IN THE COURT OF APPEALS STATE OF ARIZONA DIVISION TWO

NEALE E. SMITH,)	
)	
Plaintiff/Appellant,)	2 CA-CV 2007-0145
)	2 CA-CV 2007-0061
v.)	(Consolidated)
)	DEPARTMENT B
DPS OFFICER JOHNSTON,)	
Badge #355; DPS OFFICER SEYLER,)	MEMORANDUM DECISION
Badge #334; DPS OFFICER FRANZ,)	Not for Publication
Badge #204; DPS OFFICER COLLIER)	Rule 28, Rules of Civil
HILL; BRYAN ALAN LONOWSKI;)	Appellate Procedure
JOHNSON BIA; CECILIA E. LOU;)	
FERNANDO MUNGUIA; ROY)	
FLORES; PIMA COMMUNITY)	
COLLEGE; PIMA COUNTY BOARD)	
OF SUPERVISORS; BARBARA)	
LaWALL; VARIOUS UNKNOWN)	
ASSISTANT PIMA COUNTY)	
PROSECUTORS; JANET)	
NAPOLITANO; TERRY GODDARD;)	
and STATE OF ARIZONA,)	
)	
Defendants/Appellees.)	
	Ì	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20065166

Honorable Leslie Miller, Judge

AFFIRMED

Neale E. Smith

Tucson
In Propria Persona

Jones, Skelton & Hochuli, P.L.C. By Steven D. Leach and Eileen Dennis GilBride

Phoenix Attorneys for Defendants/Appellees Johnston, Seyler, Franz, Hill, Bia, Lou, Munguia, Flores, & Pima Community College

Barbara LaWall, Pima County Attorney By James M. Wilkes

Tucson Attorneys for Defendants/Appellees Barbara LaWall, County Prosecutors, & Pima County Board of Supervisors

Terry Goddard, Arizona Attorney General By Richard P. Broder

Tucson Attorneys for State Defendants/Appellees

VÁSQUEZ, Judge.

The action giving rise to this appeal stemmed from criminal charges filed against appellant Neale Smith in connection with a hit-and-run car accident in the parking lot of Pima Community College. After those charges were dismissed with prejudice, Smith filed a lawsuit against elected state officials, the Pima County Attorney's Office, the Pima County Board of Supervisors, and a number of administrators, security personnel, and other employees of Pima Community College. Smith appeals from the trial court's dismissal of his claims pursuant to Rule 12(b)(6), Ariz. R. Civ. P. For the reasons that follow, we affirm.

Factual and Procedural Background

- On September 1, 2005, Smith was attending a class at Pima Community College (PCC). Just after the class had begun, he was asked to report to the Administration Building, where two campus police officers "escorted" him into a conference room and closed the door. There, according to Smith, the officers questioned him about an alleged car accident in the PCC parking lot and then told him he was under arrest and being "charged with 'hit and run.'" Smith then left the room and returned to class.
- Smith to his classroom and led him back to the conference room. During further questioning, Smith either denied any wrongdoing or refused to answer questions and, at one point, issued an "invitation" to a fistfight. Smith eventually signed a traffic ticket he had been issued relating to the car accident but wrote "No Hit and Run" on the form. He was then released.
- On September 7, driving away after attending a PCC class, Smith was stopped by a PCC officer for failing to signal before making a right turn. After complying with the officer's request for his license, registration, and proof of insurance, he was then allowed to leave, apparently without being issued a citation.
- Smith was subsequently charged with false reporting to a law enforcement agency in violation of A.R.S. § 13-2907.01 and with failing to comply with A.R.S. § 28-664 (hit and run), in connection with the September 1 incident. The charges were dismissed

without prejudice in November at the prosecutor's request. Although the state refiled the charges approximately five months later, the trial court dismissed the case with prejudice based upon lack of probable cause.

On September 22, 2006, Smith filed this action naming as defendants Arizona Attorney General Terry Goddard, Governor Janet Napolitano, and the State of Arizona (collectively, "the state defendants"); Pima County Attorney Barbara LaWall, "various unknown Assistant Pima County Prosecutors," and the Pima County Board of Supervisors (collectively, "the county defendants"); and PCC and numerous PCC police officers and administrative employees (collectively, "the college defendants"). In his complaint, Smith alleged all of the defendants had committed false arrest, false imprisonment, intentional infliction of emotional distress, insurance fraud, malicious prosecution, criminal libel per se, and criminal defamation per se in relation to the September 2005 events. He also alleged that the false-reporting statute, § 13-2907.01, was unconstitutional as applied to him in the criminal proceedings.

¶7 Each group of defendants separately filed motions to dismiss on various grounds: failure to comply with the applicable statutes of limitation, failure to file a notice of claim, failure to state claims upon which relief could be granted, and absolute immunity. The court granted the state and college defendants' motions without comment, and it

¹Smith's claims of false arrest, libel per se, and "intentional infliction of emotional stress" were not alleged in the original complaint and were added in his amended complaint, filed on December 21, 2006.

granted the county defendants' motion on the basis that Smith had not filed a notice of claim as required by A.R.S. § 12-821.01. Smith filed a separate notice of appeal from the ruling on each motion to dismiss, and we have consolidated the appeals. We have jurisdiction under A.R.S. § 12-2101.

Standard of Review

In ruling on the motions to dismiss, the trial court apparently considered exhibits Smith had attached to his responses to the motions. On a Rule 12(b)(6) motion, "when matters outside the pleadings are presented to and not excluded by the court, the motion is to be treated as one for summary judgment" pursuant to Rule 56, Ariz. R. Civ. P. *Pritchard v. State*, 163 Ariz. 427, 433, 788 P.2d 1178, 1184 (1990). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). We review a trial court's grant of summary judgment de novo and view the facts in the light most favorable to the party against whom judgment was entered. *Simon v. Safeway, Inc.*, 217 Ariz. 330, ¶ 13, 173 P.3d 1031, 1037 (App. 2007).

Discussion

Smith raises numerous issues on appeal, but we address only the notice-ofclaim issue because we find it dispositive. In dismissing his claims against the county defendants, the trial court specifically found Smith had failed to comply with the notice-ofclaim statute. Although the state and college defendants had also moved to dismiss on that basis, the court gave no reason for dismissing Smith's claims against these defendants. However, "we may affirm the trial court if it is correct for any reason." *Dube v. Likins*, 216 Ariz. 406, n.3, 167 P.3d 93, 104 n.3 (App. 2007).

- Preliminarily, Smith seems to argue the trial court's rulings are deficient because they do not include any findings of fact or legal conclusions to support them. Contrary to Smith's argument, a trial court is not required to provide findings of fact and conclusions of law unless requested to do so by one of the parties. *Lenslite Co. v. Zocher*, 95 Ariz. 208, 388 P.2d 421 (1964); *see also* Ariz. R. Civ. P. 52(a) (findings of fact and conclusions of law unnecessary in rulings on motions under Rule 56).
- Smith asserts it never occurred to him, as a "Plaintiff Prose," to make a request for findings of fact and conclusions of law. But a prose litigant is "entitled to no more consideration than if [he] had been represented by counsel. [He is] held to the same familiarity with required procedures and the same notice of statutes and local rules as would be attributed to a duly qualified member of the bar." *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963) (internal citations omitted). The trial court was therefore not required to make its findings on the record, and in reviewing its orders, we will presume the court "found every fact necessary to support its [ruling]." *Horton v. Mitchell*, 200 Ariz. 523, ¶ 13, 29 P.3d 870, 873 (App. 2001), *quoting In re Estate of Shumway*, 197 Ariz. 57, ¶ 9, 3 P.3d 977, 981 (App. 1999), *vacated in part on other grounds*, 198 Ariz. 323, 9 P.3d 1062 (2000).

- In responding to the defendants' motions to dismiss, Smith filed several affidavits that included copies of demand letters he had sent to the defendants and return receipts showing they had been delivered.² He asserted that these demand letters were his notices of claim in accordance with § 12-821.01. The court apparently considered the additional letters and affidavits in finding Smith had "failed to serve [county] defendant[]s with a notice of claim" and in ruling on the motions filed by the other defendants. *See generally Backus v. State*, 534 Ariz. Adv. Rep. 26, ¶¶ 13-14 (July 17, 2008) (inferring trial court's reliance on extrinsic materials and converting motion to dismiss into motion for summary judgment).
- Smith contends that the mailing of either the demand letters or his original and amended complaints within the time required by statute, by certified mail with return receipts, "essentially complie[d] with [the notice-of-claim requirements in] § 12-821.01." The purpose of the notice-of-claim statute is "to allow the entity and employee the opportunity to 'investigate and assess their liability, to permit the possibility of settlement prior to litigation and to assist the public entity in financial planning and budgeting." *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 25, 160 P.3d 223, 230 (App. 2007), *quoting Crum v. Superior Court*, 186 Ariz. 351, 352, 922 P.2d 316, 317 (App. 1996). Section 12-821.01 provides, in pertinent part:

²We acknowledge serious questions exist as to whether the demand letters were timely filed. However, because none of the letters contain sufficient information to satisfy the other requirements of § 12-821.01, we need not address their timeliness.

A. Persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

Neither actual notice nor substantial compliance will cure a deficiency in the notice of claim, and failure to comply with the statutory requirements "bars *any* claim' against the entity or employee." *Harris*, 215 Ariz. 344, ¶ 25, 160 P.3d at 230, *quoting Salerno v. Espinoza*, 210 Ariz. 586, ¶ 7, 115 P.3d 626, 628 (App. 2005).

Smith's contention, that mailing and serving his complaint within the time provided in § 12-821.01 satisfies the claim requirements, fails as a matter of law. The purpose of the notice-of-claim statute—to provide an opportunity to assess potential liability and determine whether pursuing litigation is in the public entity's or employee's best interest—can only be achieved if the notice of claim is filed before the commencement of litigation. *See Harris*, 215 Ariz. 344, ¶ 25, 160 P.3d at 230; *Crum*, 186 Ariz. at 352, 922 P.2d at 317. Thus, permitting a plaintiff to use his complaint as a notice of claim would wholly defeat the statute, and we will not interpret a statute in a way that defeats the legislature's intent. *See Andress v. City of Chandler*, 198 Ariz. 112, ¶ 14, 7 P.3d 121, 124 (App. 2000) (finding interpretation of § 12-821.01(C) to allow filing lawsuit before filing

notice of claim would "clearly defeat the pre-litigation notification and settlement purposes" of statute); *see also Ariz. Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 233, 928 P.2d 653, 657 (App. 1996) (statutes must be read sensibly to avoid absurd results).

Smith's argument that his demand letters constituted a sufficient notice of claim is likewise without merit. As noted above, § 12-821.01(A) requires that a notice of claim contain "facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed[,]... a specific amount for which the claim can be settled and the facts supporting that amount." But Smith's demand letters contained only a list of his claims and a specific settlement amount; none of them contained any facts in support of either.³

In *Deer Valley Unified School District No. 97 v. Houser*, 214 Ariz. 293, n.3, 152 P.3d 490, 494 n.3 (2007), our supreme court suggested, in dictum, that a notice of claim is insufficient as a matter of law if it fails to provide facts in support of the settlement amount. This dictum was adopted by Division One of this court in *Backus*: "[T]o the extent such language [in *Deer Valley*] can be characterized as guidance, it is clearly and strictly limited to the admonition that a notice of claim that does not provide *any facts* may be considered insufficient to support the proposed settlement amount." 534 Ariz. Adv. Rep.

¶ 18. And, in *Backus*, the court ultimately concluded that "*any* facts in support of the

³One of Smith's demand letters does include the dates on which he alleged the incidents giving rise to his claims occurred but does not provide any facts about those events.

claimed amount constitute the minimal compliance necessary to satisfy the statute as written." $Id. \ \P \ 31.$

Conclusion

Because Smith's demand letters contain no facts in support of his claims or settlement amount, they do not even minimally comply with § 12-821.01. Consequently, his claims are barred, and the trial court's grant of summary judgment is affirmed. *See Barth v. Cochise County*, 213 Ariz. 59, ¶ 17, 138 P.3d 1186, 1190-91 (App. 2006) (affirming trial court's effective grant of summary judgment dismissing claims where notice of claim failed to satisfy requirements of § 12-821.01).

	GARYE L. VÁSQUEZ, Judge
CONCURRING:	
PETER J. ECKERSTROM, Presiding Judge	 ;

PHILIP G. ESPINOSA, Judge